

Message Text

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FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC 4539
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SUBJ: STATUS OF EC COMMISSION'S PROPOSAL FOR "CODETERMINA-
TION"

REFS: (A) ECA-459 OF DEC. 6, 1977 AND (B) EC BRUSSELS
817, JAN. 26, 1976

1. SUMMARY. CONTRARY TO THE HOPES OF ITS ADVOCATES,
"CODETERMINATION"--WORKER REPRESENTATION ON COMPANY
BOARDS--HAS NOT TAKEN THE EUROPEAN COMMUNITY BY STORM.
THE EC ECONOMIC AND SOCIAL COMMITTEE AT ITS NEXT PLENARY
SESSION FEB. 1-2 IS EXPECTED TO ENDORSE A POSITION THAT
POINTEDLY REFRAINS FROM APPROVING CODETERMINATION AS THE
MODEL FOR THE WHOLE COMMUNITY. THE COMMITTEE OPINION,
IF ADOPTED AS UNANIMOUSLY PROPOSED BY A 31-MEMBER
SUBCOMMITTEE, WILL GIVE PUBLIC EXPRESSION TO WHAT SOME EC
OFFICIALS HAVE BEEN SAYING PRIVATELY: THAT CODETERMINATION,
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AT LEAST FOR NOW ON THE EC LEVEL, IS A DEAD ISSUE.
END SUMMARY.

2. CODETERMINATION GAINED THE SUPPORT OF THE EC
COMMISSION IN 1970. THAT YEAR THE COMMISSION SENT ITS
POLICY-MAKING BODY, THE EC COUNCIL OF MINISTERS, A
PROPOSAL FOR A "EUROPEAN COMPANY STATUTE" REQUIRING AT

LEAST ONE-THIRD WORKER REPRESENTATION ON SUPERVISORY BOARDS OF PRIVATE CORPORATIONS. TWO YEARS LATER THE COMMISSION INCLUDED THE SAME REQUIREMENT FOR WORKER REPRESENTATION IN A PROPOSED DIRECTIVE--THE SO-CALLED "FIFTH DIRECTIVE"--DESIGNED TO HARMONIZE LAWS OF MEMBER STATES ON CORPORATE STRUCTURES.

3. COUNCIL HAS NOT ADOPTED EITHER THE EUROPEAN COMPANY STATUTE OR THE FIFTH DIRECTIVE. BOTH HAVE BOUNCED AMONG VARIOUS OFFICES OF THE EC BUREAUCRACY BECAUSE OF SEVERAL CONTROVERSIAL FEATURES, CODETERMINATION BEING A MAJOR ONE.

4. COMMISSION HAS FROM TIME TO TIME PUBLICLY RECONFIRMED ITS SUPPORT FOR THE CODETERMINATION PRINCIPLE, MOST RECENTLY THROUGH A NEW BOOKLET TITLED "WORKER PARTICIPATION IN THE EUROPEAN COMMUNITY" (REF A), A POPULARIZATION OF COMMISSION "GREEN PAPER" ON THE SUBJECT ISSUED IN NOVEMBER 1975. PRIVATELY, HOWEVER, SENIOR COMMISSION OFFICIALS HAVE RECENTLY BEEN SAYING THAT, SO FAR AS THE COMMISSION'S OWN PROGRAMS ARE CONCERNED, CODETERMINATION IS "DEAD." ONLY THE BURIAL REMAINS TO BE ARRANGED PROPERLY.

5. THAT ROLE HAS BEEN DUTIFULLY ASSUMED BY THE EC ECONOMIC AND SOCIAL COMMITTEE (ESC), AN ADVISORY BODY COMPOSED OF 144 REPRESENTATIVES OF LABOR, MANAGEMENT, AND OTHER LIMITED OFFICIAL USE

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NON-GOVERNMENTAL GROUPS FROM THE NINE EC COUNTRIES. THE RITUAL WILL PROBABLY TAKE PLACE DURING THE FEB. 1-2 ESC PLENARY SESSION IN BRUSSELS.

6. TASKED TO DRAFT AN OPINION ON THE 1975 COMMISSION GREEN PAPER ON WORKER PARTICIPATION, AN ESC SUBCOMMITTEE HAS FOR A YEAR AND A HALF AGONIZED OVER WHAT TO SAY. THE SUBCOMMITTEE IN MID-JANUARY FINALLY CAME UP WITH A NINE-PARAGRAPH OPINION UNANIMOUSLY APPROVED BY ITS 31 MEMBERS, INCLUDING TEN FROM LABOR.

7. THE OPINION ENDORSES "EMPLOYEE PARTICIPATION IN THE BROADEST SENSE OF THE TERM" AS A "DESIRABLE DEVELOPMENT IN A DEMOCRATIC SOCIETY," BUT POINTS OUT THAT PARTICIPATION HAS DEVELOPED IN DIFFERENT WAYS AND TO DIFFERENT DEGREES IN VARIOUS MEMBER STATES, AND "ONE MUST NOT SEEK INSTANT UNIFORMITY." THEREFORE, "THE ONLY CONCEIVABLE COMMUNITY PROVISIONS ON PARTICIPATION ARE FLEXIBLE ONES." TRANSLATION: THERE SHOULD BE NO COMMUNITY REQUIREMENT FOR WORKER REPRESENTATION ON BOARDS; THE SPECIFIC FORM OF WORKER PARTICIPATION SHOULD BE LEFT UP TO EACH COUNTRY.

8. THE OPINION DOES OFFER ONE SPECIFIC CONSOLATION TO ADVOCATES OF WORKER PARTICIPATION. IN ENDORSING A "MOVEMENT TOWARD CONVERGENCE" (I.E., TOWARD SIMILAR LABOR-MANAGEMENT SYSTEMS IN MEMBER STATES), THE COMMITTEE SAID THE COUNCIL SHOULD ADOPT A DIRECTIVE IMPOSING A NEW REQUIREMENT ON LARGE COMPANIES WHICH DO NOT HAVE BOARD-LEVEL EMPLOYEE REPRESENTATION: THE REQUIREMENT THAT EACH SUCH COMPANY ESTABLISH A "SPECIAL BODY ON WHICH THE EMPLOYEES ARE REPRESENTED AND HAVE MINIMUM RIGHTS OF INFORMATION AND CONSULTATION" (BUT NO SHARE IN DECISION-MAKING).

9. THIS OPINION, IF ADOPTED BY THE ESC PLENARY SESSION, AS IS FAIRLY CERTAIN, SHOULD HAVE AN INFLUENCE BEYOND THE LIMITED OFFICIAL USE

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USUAL ESC DOCUMENT. ESC OPINIONS HAVE NO BINDING EFFECT

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ON EC COUNCIL, BUT IT IS WIDELY BELIEVED IN COMMUNITY CIRCLES THAT ON A CONTROVERSIAL SUBJECT OF THIS NATURE, THE COUNCIL IS VERY LIKELY TO ACCEPT THE ESC OPINION AS THE FINAL WORD ON CODETERMINATION.

10. COMMISSION OFFICIALS FAVORING CODETERMINATION HAD HOPED THE ESC SUBCOMMITTEE WOULD ENDORSE CODETERMINATION AT LEAST AS A LONG-RANGE GOAL. HOWEVER, THE SUBCOMMITTEE WAS HOPELESSLY SPLIT, NOT ONLY ON A LABOR-VS.-MANAGEMENT BASIS, BUT LABOR VS. LABOR. THE EUROPEAN TRADE UNION CONFEDERATION (ETUC) ITSELF HAS NEVER BEEN ABLE TO REACH AGREEMENT ON THE COMMISSION'S PARTICIPATION PROPOSALS, AND ITS MEMBERS ECHOED THAT DISUNITY IN SUBCOMMITTEE MEETINGS.

11. THE COMMISSION HAS LOOKED NOT ONLY TO THE ESC BUT TO THE EUROPEAN PARLIAMENT FOR HELP IN KEEPING ITS WORKER

PARTICIPATION PLANS ALIVE. BUT PARLIAMENT APPEARS NO MORE ENTHUSIASTIC ABOUT CODETERMINATION THAN THE ESC. LIMITED OFFICIAL USE

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IN FEBRUARY 1977, IN A MEMO ON THE COMMISSION'S WORK PROGRAM FOR THE YEAR, COMMISSION PRESIDENT ROY JENKINS SAID THAT THE COMMISSION WOULD SEND THE COUNCIL A "REVISED" FIFTH DIRECTIVE ON WHICH PARLIAMENT'S ADVICE WOULD BE SOUGHT. DURING THE PAST YEAR, HOWEVER, THE COMMISSION HAS GROWN UNCERTAIN ABOUT HOW FAR TO WATER DOWN THE DIRECTIVE. TO TEST CURRENT VIEWS, IT PLANS TO SEND THE PARLIAMENT A NEW "WORKING PAPER" FOR REVIEW BY ITS LEGAL COMMITTEE. ACCORDING TO A COMMISSION SOURCE, THE PAPER RETAINS CODETERMINATION AS A FINAL OBJECTIVE, BUT ALLOWS OTHER FORMS OF WORKER PARTICIPATION AS A SUBSTITUTE DURING A LIMITED TRANSITION PERIOD. AS A FALLBACK POSITION, ACCORDING TO THE SAME SOURCE, THE COMMISSION MIGHT HAVE TO ACCEPT AN UNLIMITED TRANSITION PERIOD. IN ANY CASE, PARLIAMENT'S LEGAL COMMITTEE IS EXPECTED TO TAKE UP TO 12 MONTHS TO STUDY THE COMMISSION'S REVISED DIRECTIVE, AND BY THAT TIME PARLIAMENTARIANS MAY DECIDE TO DEFER FURTHER CONSIDERATION OF THE ISSUE TO THE FIRST DIRECTLY ELECTED PARLIAMENT.

12. ANOTHER CHANNEL FOR INITIATIVE ON CODETERMINATION IS THE EC COUNCIL'S ROTATING PRESIDENCY, WHICH GIVES ITS OCCUPANT THE LEADING ROLE IN SETTING THE EC'S AGENDA. THE GERMAN GOVERNMENT, WHICH ASSUMES THE PRESIDENCY IN THE SECOND HALF OF 1978, AND WHICH HERETOFORE HAS BEEN THE LEADING GOVERNMENTAL ADVOCATE OF EXTENDING CODETERMINATION TO THE EUROPEAN LEVEL, PRESENTLY HAS NO PLANS TO PRESS THE ISSUE DURING ITS PRESIDENCY, ACCORDING TO A SOURCE IN THE GERMAN PERMANENT DELEGATION AND OTHERS IN THE COUNCIL SECRETARIAT AND THE COMMISSION. REASON GIVEN: THE FRG'S PUSHING THIS CONTROVERSIAL QUESTION IN BRUSSELS MIGHT UNSETTLE THE DELICATE BALANCE OF THE

GOVERNING COALITION IN BONN, WHERE THE SPD AND FDP ARE
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ALREADY IN DISAGREEMENT OVER IMPLEMENTATION OF GERMAN
CODETERMINATION (77 BONN 11319).

13. AT PRESENT WORKER REPRESENTATION ON COMPANY BOARDS
EXISTS IN ONLY THREE EC COUNTRIES--GERMANY, DENMARK AND
LUXEMBOURG. (UNDER HOLLAND'S FORM OF WORKER PARTICIPATION,
WORKERS ARE EXCLUDED FROM SERVING ON THE
BOARD OF THE COMPANY FOR WHICH THEY WORK--AS ARE THEIR
UNION REPRESENTATIVES--BUT THEY CAN HAVE INFLUENCE IN
CHOOSING SOME BOARD MEMBERS.) GERMANY, HOWEVER, HAS THE
FULLEST FORM OF CODETERMINATION IN THE EC NINE; IN FACT,
IT STANDS OUT AS THE ONLY LARGE EC COUNTRY WITH ANY
FORM OF CODETERMINATION.

14. IF GERMANY DOES INDEED HOLD BACK ON THIS QUESTION
DURING ITS EC PRESIDENCY, THEN IT IS EXTREMELY UNLIKELY
THAT ANY OTHER EC COUNTRY WILL PRESS THE ISSUE. MOREOVER,
IF THE ESC FAILS TO APPROVE CODETERMINATION, IT IS HARDLY
LIKELY THAT ANY OTHER NON-GOVERNMENTAL GROUP WILL TAKE UP
THE CUDGELS. THUS, ON THE EUROPEAN LEVEL, CODETERMINATION
TODAY LOOKS LIKE A CAUSE WITHOUT A CHAMPION. HINTON

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